

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION**

MARY MARTHA MCCOMAS,

Plaintiff,

No. 1:22-cv-00435-CL

v.

ORDER

**PHH MORTGAGE CORPORATION,
et al.,**

Defendants.

AIKEN, District Judge.

This case comes before the Court on a Findings and Recommendation filed by Magistrate Judge Mark Clarke. ECF No. 36. Judge Clarke recommends that Defendants' Motion to Dismiss and Request for Judicial Notice be granted. ECF Nos. 21, 22. Judge Clarke recommends that Plaintiff's Motion for Leave to File an Amended Complaint, ECF No. 31, be denied and that this case be dismissed with prejudice.

Under the Federal Magistrates Act, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge's findings and

recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”). Although no review is required in the absence of objections, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Id.* at 154. The Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court should review the recommendation for “clear error on the face of the record.”

In this case, Plaintiff filed Objections to the F&R, ECF No. 38, and Defendant has filed a Response, ECF No. 39. The Court has reviewed the F&R, the Objections, Response, and the record and finds no error. The F&R, ECF No. 36, is therefore ADOPTED. Defendants’ Motion to Dismiss, ECF No. 21, and Request for Judicial Notice, ECF No. 22, are GRANTED. Plaintiff’s Motion for Leave to File Second Amended Complaint, ECF No. 31, is DENIED.

After close of briefing on the F&R, Plaintiff filed an Ex Parte Motion for Order on Plaintiff’s Pending Motion for Leave to File Second Amended Complaint. ECF No. 49. Leaving aside the propriety of an ex parte filing, this motion is DENIED for

failure to confer and certify conferral as required by Local Rule 7-1(a). The Court further notes that Plaintiff's Motion for Leave to file Second Amended Complaint is encompassed by recommendations of Judge Clarke's F&R.

This case is DISMISSED without further leave to amend. Final judgment shall be entered accordingly.

It is so ORDERED and DATED this 15th day of May 2023.

/s/Ann Aiken
ANN AIKEN
United States District Judge